IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25/02/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

W.P. No.18488 of 1999

V. Chithra
Inspectress of Labour
Coimbatore 600 018 ... Petitioner

-Vs-

1. The Secretary to Government
Government of Tamil Nadu
Labour and Employment Department
Chennai 9

2. The Commissioner of Labour
Chennai 600 006 ... Respondents

Petition under Art.226 of the Constitution of India
praying for a Writ of Certiorarified Mandamus
as stated in the petition

For Petitioner :: Mrs. Lita Srinivasan

For Respondents :: Mr. P. Chandrasekaran
Spl.G.P.

:ORDER

(Order of the Court was made by V.S. SIRPURKAR, J.)

This is an extremely unusual case and a classic example of apathy on the part of the Government to comply with the orders passed by the Tamil Nadu State Administrative Tribunal (in short the Tribunal). For understanding the controversy, few facts would be necessary.

2. Petitioner was selected for the post of Inspectress of Factories in the Tamil Nadu Factories Services. She was directly recruited and joined her service on 18-10-1977. She kept on serving there, without any blemish. Thereafter, by G.O. Ms. No.17 (Labour and Employment) dated 9-2-1993, the post of Inspectress of Factories was transferred to the Labour

Department as it was felt that the post of Inspectress of Factories in the Factories Department would be of no consequence. She was to be re-designated as Inspectress of Labour and was to be treated as in addition to the category of Labour Officer in the Tamil Nadu Labour Service. For that purpose, the relevant rules were also to be amended. At least that is the wording of the said transfer order dated 9-2-1993. The following paragraph in that order is worth-noting:

"The Chief Inspector of Factories has also represented that she has put in 11 years of services in the Department and she has no chances of promotion. As she also possesses the same qualification prescribed for the post of Inspectress of Labour in Labour Department, she has requested that she may be transferred to the Labour Department."

3. The case of the petitioner is that she has never requested for any kind of transfer. Learned Special Government Pleader also supports the statement of the petitioner and says that there is no request for transfer from the petitioner. Be that as it may, the post was thus transferred to the Labour Department. The petitioner then waited for the department to amend the rules so that her seniority could be fixed in the combined category of Labour Officers. However, finding that several persons junior to her had a marc h over her in the matter of promotion, she filed the original application (O.A. No.2628 of 19 94) before the Tribunal wherein she claimed the fixation of seniority as also the consequent promotions. The Tribunal passed the following order in the nature of directions on 18-5-1994:

"We have emphasised in several cases that order issued requiring an amendment to service rules should be followed up promptly for issue of the necessary amendment. Normally 3 months should be the outer limit. Administrative action for preparation of seniority list in the combined category should have been taken immediately after issue of orders and pending amendment to the rules. Temporary promotion should have been made only with reference to such seniority. The respondents are directed to take action accordingly and consider the claim of the applicant for promotion with reference to her seniority in the category of Labour Officer immediately."

In spite of this direction, the respondents tightly sat over the same and did not pass any orders.

4. In the mean time, the petitioner sent several reminders dated 1 0-8-1994, 1-6-1995, 9-10-1996, 23-6-1997, 3-6-1998, 15-2-1999 and 1-3 -1999 requesting the respondents to implement the order dated 18-5-19 94. It is a great pity that the petitioner did not file the contempt application against the respondents because this was a blatant contempt of the Tribunal. Instead, the petitioner filed the present writ petition, which was registered as W.P. No.18488 of 1999. In this writ petition also the petitioner prayed that since the Tribunal had not given her the complete relief of deemed promotion, to which she was entitled, as also the benefit of seniority to which also she was entitled, the order of the Tribunal should be quashed to that extent and to grant her the necessary promotions and other benefits.

5. Ordinarily the matters should not have been very difficult but for the orders passed by the Government vide G.O. Ms. No.86 dated 8-10-2002. The said Government Order has obviously been passed during the

pendency of the present writ pet this Government Order, the order of the Tribunal is fully quoted. However, in paragraph 4, it is stated that the proposal for issuing amendments to the Special Rules for Tamil Nadu Labour Service incorporating the post of Inspectress of Labour, Madras as an addition to the category of Labour Officer in Tamil Nadu Labour Service is under consideration of the Government. Therefore, it is obvious that no rules have been framed so far though the period of over eight years has elapsed after the direction of the Tribunal. Paragraph 5 makes a more interesting reading. It reads as under:

"Regarding fixation of seniority the Commissioner of Labour has stated that the seniority of the individual has to be determined with reference to the date of joining in Labour Department (i.e.) from 5-3-199 3. As per Rule 35(aa) and 35(b) of Tamil Nadu State and Subordinate Service Rules, the seniority of Tmt. V. Chitra, Inspectress of Labour has to be determined with effect from 5-3-1993, the date on which she joined as Inspectress of Labour in Labour Department."

Further paragraphs suggest that her seniority had to be fixed immediately below the direct recruits who were recruited and joined the services in the year 1993. Noting that the last recruit Thiru A. Gnanasekaran was given the seniority at Sr. No.249, her seniority has been fixed at Sr.No.249A. By a separate application, the learned counsel seeks to challenge this order also. For that purpose, an amendment application has been made before us.

6. It is obvious that great injustice has been done to the petitioner. It has to be remembered in this case that the petitioner never sought an order of transfer. That is the admitted position. The post was transferred from the Factories Department to the Labour Department because the Government felt that the post of Inspectress of Factories was of no consequence in the Factories Department and, therefore, the Government effected the transfer of that post from the Factories Department to the Labour Department. This was obviously the act on the part of the Government. This action was not sought by the petitioner. Under such circumstances, the Government should have taken immediate action in framing the rules and adding that additional post to the category of the post of Labour Officers but, for the reasons not known and which are beyond comprehension, the Government did not do it. There was a specific direction issued by the Tribunal to do the needful. However, even those directions have not been complied with. Instead, during the pendency of the writ petition, probably, when the Government came to realise that it had slept for over eight to ten years, a fresh order came to be passed on 8-10-2002, fixing her seniority with effect from the date of her entry in to the Labour Department, i.e. 1993, completely ignoring the fact that she was entitled to the seniority with effect from 1977, when she entered the Government service as Inspectress of Factories. A very peculiar observation has been made in relation to Sec.35(aa) and 35(b) of the Tamil Nadu State and Subordinate Service Rules (in short "the Rules"). Rule 35(aa) reads thus:

"(aa) The seniority of a person in service, class, category or grade shall, where the normal method of recruitment to that service, class, category or grade is by more than one method of recruitment, unless the individual has been reduced to a lower rank as a punishment, be determined with reference to

the date on which he is appointed to the services, class, category or grade.
... ...
In sharp contradistinction to this rule, Rule 35(b) reads thus:
(b) The transfer of a person from one class or category of a service to another class or category carrying the same pay or scale of pay shall not be treated as first appointment to the latter for the purpose of seniority and the seniority of a person so transferred shall be determined with reference to the rank in the class or category from which he was transferred; where any difficulty or doubt arises in applying this sub-rule seniority shall be determined by the appointing authority.

7. A cursory glance at Rule 35(aa) would show that the said rule is not applicable to this case at all. We are not considering the inter se seniority of the petitioner with the other Labour Officers. That was not the problem. Rule 35(aa) is a general rule merely suggesting that the person would start earning his seniority on and from the date he/she joins the service. Rule 35(aa) is not meant for the eventuality which has happened in the present case. The proper rule was Rule 35(b) which speaks of the transfer of a person from one class or category of a service to the another class or category carrying the same pay or scale of pay. Here was a person who was holding the post of Inspectress of Factories which was one class or category of the service and she was transferred to another class or category of the service, viz. Inspectress of Labour, which was commensurate with the post of Labour Officer and it is an admitted position that both these posts carried the same pay scale. If this transfer took place not by the volition of the petitioner but because of the order of the Government, it is innate that her seniority should have been considered with effect from the date when she was appointed as the Inspectress of Factories. However, that is not done and instead she has been deprived of her seniority between 1977 and 1993. It is reported by the learned counsel for the petitioner before us that the persons junior to the petitioner have become conferred I.A.S. officers and have earned two or three promotions at least whereas the petitioner is kept where she was.

8. We are in full agreement with the learned counsel that there is patent injustice done and the learned Special Government Pleader is also not able to show any reason as to why a proper action has not been taken so far by amending the rules and also by fixing the proper seniority. Learned Special Government Pleader tried to contend that since this was her first entry into the Labour Department, the seniority will be reckoned from that date. We do not agree.

9. However, it will not be possible for us to grant any relief in this writ petition for the simple reason that the question of her seniority has been decided for the first time by G.O.Ms.No.86 dated 8-10 -2002 and the proper forum for the petitioner would be to approach the Tribunal because the petitioner is admittedly in State Government service and this question refers to her service. The seniority is undoubtedly a part of the service jurisprudence. Therefore, it would be for the petitioner to approach the Tribunal.

9. We, accordingly, direct a remand and would request the Tribunal to pass orders within two months. In the mean time, the petitioner would also be at liberty to amend her original application and challenge the order dated 18-10-2002. The amendment application, if made, shall be allowed by the Tribunal. This we say because the emergence of the Government Order dated 8-10-2002 would be a subsequent event after the the original application, which can always be challenged or met with the amendment application. We accordingly give the liberty to the petitioner to amend her original application. That shall be done within two weeks from the date the records reach the Tribunal. We request the Tribunal to dispose of this matter in the light of the observations made by us and to fix the seniority of the petitioner. It would be for the Tribunal to consider the question of her further promotions and/or the benefits of the seniorit y flowing from her fresh fixation of her seniority.

10. We accordingly dispose of the petition with these observations. In view of the orders passed, it shall not be necessary to consider the other petitions for amendment (W.P.M.P. Sr. No.17090 of 2003) and direction (W.P.S.R. No.17089 of 2003) made before us. They are closed. The writ petition succeeds to the extent that we have indicated above. No costs.

Index:Yes
Website:Yes

Jai

To:

1. The Secretary to Government
Government of Tamil Nadu
Labour and Employment Department
Chennai 9

2. The Commissioner of Labour
Chennai 600 006

3. The Registrar
Tamil Nadu state Administrative Tribunal
Chennai